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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1446

PEOPLE OF THE STATE OF MICHIGAN
Petitioner,

-v-

WAYNE HAMPTON
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MICHIGAN

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent Wayne Hampton respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Michigan Supreme Court's opinion in this case. That opinion is reported at 407 Mich 354; 285 NW 2d 284 (1979).

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REASON FOR DENYING THE WRIT

Petitioner asks this Court to determine whether the "reasonable doubt" test of Jackson v Virginia, ____ US ____; 99 SCt 2781; 61 LEd 2d 560 (1979) applies to sufficiency challenges on direct review, upon the record and opinion in the instant case. Yet the instant case should not be reviewed because (a) the holding of Jackson supra, as a matter of constitutional law, would necessarily have to apply to state appellate courts on direct review, (b) the facts and circumstances of the instant case do not demonstrate that the Jackson, supra, or "reasonable doubt," test is unworkable, and (c) in any event, even if this court were to reevaluate the "reasonable doubt" test and revert to the previous "No Evidence" standard of Thompson v Louisville, 362 US 199; 80 SCt 624; 4 LEd 2d 654; 80 ALR 2d 1355 (1960), the result in the instant case would not change, for respondant was granted a New Trial, and not Judgment of Acquittal.

That the holding of Jackson, supra, would also apply to cases on direct review in state appellate courts, can hardly be questioned. Indeed Mr. Justice Stewart stated as much, when he wrote:

> " . . . A challenge to a state conviction brought on the ground that the evidence cannot fairly be deemed sufficient to have established guilt beyond a reasonable doubt states a federal constitutional claim. Although state appellate review undoubtedly will serve in the vast majority of cases to vindicate the due process protections that follows from Winship, the same could also be said of the vast majority of other federal constitutional rights that may be implicated in a state criminal trial. It is the occasional abuse that the federal writ habeas corpus stands ready to correct. [citations omitted]" 61LEd 2d at 575-576
> (emphasis added)

Respondent sees no need to expressly consider this question under the circumstances. Similarly, Petitioner has failed to demonstrate how the application of Jackson, supra, to the instant case, demonstrates that the test is unworkable. Indeed, a majority of the Michigan Supreme court took the position that the trial court in fact granted a motion for new trial, rather than a directed verdict of acquittal. See People v Hampton, 407 Mich 354; 285 NW 2d 284 (1979), Opinions of Justices Coleman and Levin. It must not be overlooked that the trial court order of Judge Crockett, Jr. was issued on April 4,

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1977, over two years before Jackson, supra, was decided. Indeed, it is not even clear that the Jackson standard was even applied to the instant case by the trial court. See Hampton, supra, 407 Mich at 372, Opinion of Justice Coleman.

The hypothetical proposed by petitioner in demonstrating the awkwardness of the "reasonable doubt" standard simply fails to apply to the facts of the instant case. Respondent maintains that "... the burden that is likely to follow from acceptance of the Winship standard has ... been exaggerated" Jackson, supra, 61 LEd 2d at 575. But if this court should desire to reevaluate the standard imposed by Jackson supra, respondent suggests that this case is not the appropriate one to consider.

This court should consider the question only when a case appears in which a different result would follow under the "No evidence" test than under the "Reasonable doubt" test. Cf In re Winship, 397 US 358; 90 SCt 1068; 25 LEd 2d 368; 51 Ohio Ops 2d 323 (1970), where the trial Judge noted that the result might well have been different under a different standard of proof.

The Michigan Supreme Court did originally grant leave to appeal in the instant case on the question of whether, in the circumstances of this case, the trial court invaded the province of the jury when he granted the defendant's motion for directed verdict after the jury had returned a verdict finding the defendant guilty. See 408 Mich 828; ____ NW 2d __. But since the court ruled that Hampton was in fact granted a new trial rather than a directed verdict of acquittal, this case is not an appropriate one in which to review the questions presented in Petitioner's Writ.

Nor is the outcome of further proceedings in the trial court necessarily "preordained" by this Court's decisions in Jackson v Virginia, supra, and Burks v United States, 437 US1; 98 SCt 2141; 57 LEd 2d 1 (1978). As pointed out by Justice Coleman "... the question of whether the ordering of a new trial ... violates double jeopardy was specifically left unresolved in Greene v Massey, 437 US 19, 26, fn 10; 98 SCt 2151; 57 LEd 2d 15 (1978). decided the same day as Burks, supra." Hampton, supra, 407 Mich at 369,n3.

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Rather than granting certiorari, this court should allow the prosecutor to proceed with a new trial in the trial court. The trial court should be allowed the first opportunity to consider whether any double jeopardy prohibitions effect the instant case.

CONCLUSION

WHEREFORE, for the reasons stated above, respondent submits that plenary review should not be granted.

Respectfully submitted,

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IN THE

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October Term, 1979

No. 79 1446

PEOPLE OF THE STATE OF MICHIGAN, Petitioner

v.

WAYNE HAMPTON, Respondent

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The respondent, WAYNE HAMPTON, asks leave to file the attached Reply in Opposition to a Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan, without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46. Respondent was afforded assigned counsel at all prior hearings below.

The respondent's affidavit in support of this motion is attached hereto.

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IN THE SUPREME COURT
OF THE UNITED STATES

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Petitioner,

-vs- No. 79 1446

WAYNE HAMPTON,

Defendant-Respondent.
_____/

AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED IN OPPOSITION TO CERTIORARI
IN FORMA PAUPERIS

I, WAYNE HAMPTON, being first duly sworn, deposes and says that I am the defendant-respondent in the above entitled case; that in support of my motion to proceed in opposition to plaintiff-petitioner's petition for a writ of Certiorari without being required to prepay fees, costs (including printing costs) or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of the above proceeding are true.

1. Are you presently employed?

No.

b. July, 1979 - $125.00 per week.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. Yes. I painted apartments for my girlfriend's landlord three (3) different times in the last twelve (12) months, and received seventy five dollars ($75.00) each time.

3. Do you own any cash or checking or savings account?

a. Yes. Ten dollars ($10.00) cash. No checking or savings account.

4. Do you own any real estate, stocks, bonds,

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notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

No. My car was repossessed and I still owe a balance of five hundred seventy one dollars ($571.00) on the contract.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

None.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Wayne Hampton
WAYNE HAMPTON

Subscribed and sworn to before me
this 18th day of July, 1980.

Cheryl A Browne
Cheryl A. Browne, Notary Public
Wayne County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 7/26/80

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